

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 15-10324(MG)

4 - - - - - x

5 In the Matter of:

6
7 CALEDONIAN BANK LIMITED,

8
9 Debtor.

10
11 - - - - - x

12
13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16
17 April 27, 2015

18 2:08 PM

19
20 B E F O R E :

21 HON MARTIN GLENN

22 U.S. BANKRUPTCY JUDGE

Hearing re: PTBS: 49 Motion Pursuant to 11 U.S.C. 1521(b)
for Entry of Order Entrusting Distribution of Debtors Assets
Located in the United States to the Foreign Representative.

Transcribed by: Debra McCostlin

1 A P P E A R A N C E S :

2 PROSKAUER ROSE LLP

3 11 Times Square

4 New York, NY 10036-8299

5

6 BY: GEOFFREY RAICHT, ESQ.

7 JARED ZAJAC, ESQ.

8 MARGARET DALE, ESQ.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: All right. Please be seated. All right. We're here in Caledonian Bank Limited, 15-10324.

MR. RAICHT: Good afternoon, Your Honor. Geoffrey Raicht, Proskauer Rose, for Caledonian Bank.

THE COURT: Good afternoon.

MR. RAICHT: Good afternoon. I have with me today at counsel table is Jared Zajac and Margaret Dale from my office and in the gallery is Mr. Keiran Hutchison from Ernst & Young who is one of the joint official liquidators as well as Rupert Bell from the law firm of Walkers, also from Cayman.

Your Honor, we're here today on the motion of the liquidators for an order under 1521(b) to entrust them with the distribution of assets located here in the United States. We've had no objection filed to this motion.

THE COURT: I was glad to see that.

MR. RAICHT: As we were as well, Your Honor. And just to -- we also had no objection from the SEC, Your Honor, as you probably noted --

THE COURT: Yes.

MR. RAICHT: -- from the motion that it's -- if all the funds are still subject to the district court's order. However Your Honor wishes to proceed today.

1 THE COURT: You know, I had raised at prior
2 hearings the issue whether Koreag or Altos Hornos created
3 sort of a preliminary issue that this Court would have to
4 deal with. I had inquired about whether there were any sub
5 accounts, whether all accounts were in the name of the
6 foreign debtor, and you certainly addressed all of the
7 issues that were of concern to me in the papers you filed in
8 support of the request for leave. And I think you
9 undoubtedly would have done it anyway. And certainly, I
10 think, has resulted in what we have before us, an
11 uncontested motion.

12 I also -- a little while ago I went back over the
13 form and the order that you submitted and I was satisfied
14 with that. It leaves the issue of the disposition of any
15 proceeds that are returned to the Cayman to the Cayman
16 court, which is I think the appropriate result.

17 MR. RAICHT: Yes, Your Honor.

18 THE COURT: So I did review all of the papers and
19 I'm satisfied. So pending before the Court is the motion
20 pursuant to 11 U.S.C Section 1521(b) for entry of order
21 entrusting distribution of Debtor's assets located in the
22 United States to the foreign representatives. The motion is
23 filed at ECF Docket No. 49. The motion is supported by
24 declaration of Keiran Hutchison, and that declaration is at
25 ECF Docket No. 48. The motion is unopposed. The motion is

1 granted.

2 Let me just briefly add -- I won't review the
3 entire history or the factual showing that's made -- Section
4 1521(b) of the bankruptcy code provides that, quote, "upon
5 recognition of a foreign proceeding" -- I'll leave some
6 words out -- "the Court may, at the request of the foreign
7 representative, entrust the distribution of all or part of
8 the Debtor's assets located in the United States to the
9 foreign representative or another person, including an
10 examiner authorized by the Court, provided that the Court is
11 satisfied that the interests of creditors in the United
12 States are sufficiently protected."

13 Section 1522 of the code provides that relief
14 under Section 1521 may be granted, quote, "only if the
15 interests of the creditors and other interested entities,
16 including the Debtor, are sufficiently protected." And
17 further that "The Court may subject relief granted under" --
18 I'll leave some words out again -- "1521 to conditions it
19 considers appropriate, including the giving of security or
20 the filing of a bond." That's at 1522(b).

21 The only court to address the issue of the burden
22 of proof with respect to relief under 1521(b) held that a
23 foreign representative has the initial burden of
24 establishing that he or she should be entrusted with the
25 administration of the foreign debtor's United States assets

1 and the interests of creditors and other interested entities
2 are sufficiently protected and wherever, quote, "ultimately
3 the burden of establishing the absence of sufficient
4 protection rests on the objecting parties," close quote.

5 See *In Re Lee*, 472 B.R. 156 (Bankr. D. Mass. 2012).

6 The foreign representatives here assert and have
7 established in the evidence that they've submitted that the
8 Debtor's United States assets, including the U.S. accounts,
9 belong to the Debtor. In the *Koreag* decision, the Second
10 Circuit held that "Before a particular property may be
11 turned over pursuant to" -- and this was former Section
12 304(b)(2) - "a bankruptcy court should apply local law to
13 determine whether the Debtor has a valid ownership interest
14 in that property when the issue is properly posed by an
15 adverse claimant. See 961 F.2d 341, 349 (2nd Cir. 1992)."
16 The subsequent *Altos Hornos* decision clarifies that *Koreag*
17 only applies to disputes that present a bonafide question of
18 property ownership.

19 And here I'm satisfied that the proper evidentiary
20 showing has been made, that the accounts that are involved
21 here are in the name of the foreign debtor and not in the
22 name of any other claimants, and their rights are
23 sufficiently protected. The courts in the Caymans properly
24 respect due process, and indeed none of those parties are
25 actually U.S. residents. Those who've appeared and raised

1 this issue before, they're all foreign entities, so the --
2 it doesn't present an issue of protection of U.S. creditors,
3 although the Court would be satisfied in any event that the
4 Cayman provides an appropriate system for resolving issues
5 of ownership and property in, as I had suggested before, it
6 is the appropriate forum in this situation to adjudicate any
7 disputes about ownership of any of the particular assets.

8 So the Court grants the motion. And as I said
9 earlier, I did review the order. The proposed order that's
10 been submitted is appropriate in form and that will be it.

11 MR. RAICHT: Thank you, Your Honor. We have, with
12 your chamber's permission, I believe an electronic copy was
13 sent to chambers.

14 Your Honor, before I move to the second topic for
15 today just -- the lack of objection today, Your Honor, as
16 much as I would love to take credit for it exclusively by
17 myself, I think Your Honor's ability to focus the parties on
18 the issues and have them, for lack of a better phrase, put
19 their money where their mouth is was certainly a catalyst to
20 having an uncontested hearing. So on behalf of the
21 liquidators, we thank you for your thoughtfulness.

22 Secondly, Your Honor, what -- several weeks ago,
23 as Your Honor may recall, we had a motion to request waiving
24 certain requirements to file schedules. At the last hearing
25 Your Honor -- you indicated and what we did was we went down

1 to the Cayman court and asked the Cayman court for an order
2 that would permit the liquidators to file a copy of the
3 names and the addresses of all the depositors under seal
4 with this court as well as provide a copy of the unredacted
5 version of that to the U.S. Trustee with the understanding
6 that the U.S. Trustee, upon review, would either return it
7 to me or to the liquidators or have it destroyed.

8 That order was entered by the Cayman court. And,
9 Your Honor, we are prepared to -- if Your Honor would
10 indulge us, we can do it today or after hearing today to do
11 an ex parte --

12 THE COURT: You can do it after the hearing today.

13 MR. RAICHT: -- to do an ex parte order allowing
14 us to file under seal.

15 THE COURT: Yes. And I'll make sure that the
16 unredacted copy is put in our vault of the court so it'll be
17 in safekeeping and not available.

18 MR. RAICHT: Right. And just to be clear, Your
19 Honor, what we're going to -- the list of depositors is the
20 part that we're going to keep confidential. There are
21 creditors who maybe did file a notice of appearance who
22 aren't subject to the confidentiality, and we will certainly
23 disclose who they are. And I think that's what we have,
24 Your Honor.

25 THE COURT: Okay. I still want that done, but the

1 fact that there were no objections to the 1522(b) issue, in
2 large measure, eased my concern, the reasons that I wanted
3 to have the unredacted information available. Certainly at
4 a prior hearing we identified creditors, foreign creditors,
5 who showed up and appeared to want to assert an interest in
6 it and I wasn't going to permit a proceeding here without
7 identification of who they were.

8 So some of that's been obviated, but I'll make
9 sure that what's filed under seal -- and I appreciate the
10 efforts of you and your colleagues and foreign counsel to
11 obtain the order in the Caymans, and I have no intention of
12 having that information publicly disclosed, but we'll make
13 sure that the unredacted copy is kept appropriately--

14 MR. RAICHT: Thank you, Your Honor. And --

15 THE COURT: -- for safekeeping.

16 MR. RAICHT: You know, been practicing in this
17 industry long enough that you never know what's going to
18 happen in the future so we might as well have the order in
19 place now.

20 THE COURT: All right. Thanks very much.

21 MR. RAICHT: Thank you, Your Honor.

22 THE COURT: Okay. All right. We're adjourned.

23 (Whereupon these proceedings were concluded at 2:18 PM)

24

25

I N D E X

RULINGS

Page

Motion for Entry of Order Entrusting

5

Distribution of Debtor's Assets

Located in the United States to the

Foreign Representatives. [ECF No. 48, 49]

C E R T I F I C A T I O N

I, Debra McCostlin, certify that the foregoing transcript is
a true and accurate record of the proceedings.

Debra
McCostlin

Digitally signed by Debra McCostlin
DN: cn=Debra McCostlin, o, ou,
email=digital1@veritext.com, c=US
Date: 2015.04.28 15:29:26 -04'00'

(Debra McCostlin)

Date: 4/28/2015

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

&	addressed 5:6	burden 6:21,23 7:3	creditors 6:11,15
& 4:11	addresses 9:3	c	7:1 8:2 9:21 10:4,4
1	adjourned 10:22	c 3:1 4:1 12:1,1	d
10036-8299 3:4	adjudicate 8:6	caledonian 1:7 4:4	d 4:1 7:5 11:1
11 2:1 3:3 5:20	administration 6:25	4:6	dale 3:8 4:9
11501 12:25	adverse 7:15	case 1:3	date 12:12
15-10324 1:3 4:4	afternoon 4:5,7,8	catalyst 8:19	deal 5:4
1521 2:1 4:15 5:20	ago 5:12 8:22	cayman 4:13 5:15	debra 2:25 12:3,7
6:4,14,18,22	allowing 9:13	5:15 8:4 9:1,1,8	debtor 1:9 5:6 6:16
1522 6:13,20 10:1	altos 5:2 7:16	caymans 7:23 10:11	7:9,13,21
156 7:5	anyway 5:9	certain 8:24	debtor's 5:21 6:8,25
1992 7:15	appearance 9:21	certainly 5:6,9 8:19	7:8 11:6
2	appeared 7:25 10:5	9:22 10:3	debtors 2:2
2 7:12	applies 7:17	certify 12:3	decision 7:9,16
2012 7:5	apply 7:12	chamber's 8:12	declaration 5:24,24
2015 1:17	appreciate 10:9	chambers 8:13	depositors 9:3,19
27 1:17	appropriate 5:16	cir 7:15	destroyed 9:7
2:08 1:18	6:19 8:4,6,10	circuit 7:10	determine 7:13
2:18 10:23	appropriately 10:13	claimant 7:15	disclose 9:23
2nd 7:15	april 1:17	claimants 7:22	disclosed 10:12
3	asked 9:1	clarifies 7:16	disposition 5:14
300 12:24	assert 7:6 10:5	clear 9:18	disputes 7:17 8:7
304 7:12	assets 2:2 4:16 5:21	clerk 4:2	distribution 2:2
330 12:23	6:8,25 7:8 8:7 11:6	close 7:4	4:16 5:21 6:7 11:6
341 7:15	authorized 6:10	code 6:4,13	district 1:2 4:24
349 7:15	available 9:17 10:3	colleagues 10:10	docket 5:23,25
4	b	concern 5:7 10:2	due 7:24
4/28/2015 12:12	b 1:20 2:1 4:15 5:20	concluded 10:23	e
472 7:5	6:4,20,22 7:12 10:1	conditions 6:18	e 1:20,20 3:1,1 4:1,1
48 5:25 11:8	b.r. 7:5	confidential 9:20	11:1 12:1
49 2:1 5:23 11:8	back 5:12	confidentiality 9:22	earlier 8:9
5	bank 1:7 4:4,6	considers 6:19	eased 10:2
5 11:5	bankr 7:5	copy 8:12 9:2,4,16	ecf 5:23,25 11:8
9	bankruptcy 1:1,13	10:13	efforts 10:10
961 7:15	1:22 6:4 7:12	counsel 4:9 10:10	either 9:6
a	behalf 8:20	country 12:23	electronic 8:12
ability 8:17	believe 8:12	court 1:1,13 4:3,7	entered 9:8
absence 7:3	bell 4:12	4:18,22 5:1,3,16,18	entire 6:3
accounts 5:5,5 7:8	belong 7:9	5:19 6:6,10,10,17	entities 6:15 7:1 8:1
7:20	better 8:18	6:21 7:12 8:3,8 9:1	entrust 4:15 6:7
accurate 12:4	bonafide 7:17	9:1,4,8,12,15,16,25	entrusted 6:24
add 6:2	bond 6:20	10:15,20,22	entrusting 2:2 5:21
address 6:21	bowling 1:14	court's 4:24	11:5
	briefly 6:2	courts 7:23	entry 2:2 5:20 11:5
		created 5:2	ernst 4:10
		credit 8:16	

esq 3:6,7,8 established 7:7 establishing 6:24 7:3 event 8:3 evidence 7:7 evidentiary 7:19 ex 9:11,13 examiner 6:10 exclusively 8:16	h happen 10:18 hearing 2:1 8:20,24 9:10,12 10:4 hearings 5:2 held 6:22 7:10 history 6:3 hon 1:21 honor 4:5,14,19,21 4:25 5:17 8:11,14 8:15,22,23,25 9:9,9 9:19,24 10:14,21 honor's 8:17 hornos 5:2 7:16 hutchison 4:10 5:24	kept 10:13 know 5:1 10:16,17 koreag 5:2 7:9,16	notice 9:21 ny 3:4 12:25
		l lack 8:15,18 large 10:2 law 4:12 7:12 leave 5:8 6:5,18 leaves 5:14 lee 7:5 legal 12:22 limited 1:7 4:4 liquidators 4:11,15 8:21 9:2,7 list 9:19 little 5:12 llp 3:2 local 7:12 located 2:3 4:16 5:21 6:8 11:7 long 10:17 love 8:16	o o 1:20 4:1 12:1 objecting 7:4 objection 4:17,20 8:15 objections 10:1 obtain 10:11 obviated 10:8 office 4:10 official 4:11 okay 9:25 10:22 old 12:23 order 2:2 4:15,25 5:13,20 8:9,9 9:1,8 9:13 10:11,18 11:5 ownership 7:13,18 8:5,7
f f 1:20 12:1 f.2d 7:15 fact 10:1 factual 6:3 file 8:24 9:2,14,21 filed 4:17 5:7,23 10:9 filing 6:20 firm 4:12 focus 8:17 foregoing 12:3 foreign 2:3 5:6,22 6:5,6,9,23,25 7:6,21 8:1 10:4,10 11:8 form 5:13 8:10 former 7:11 forum 8:6 funds 4:24 further 6:17 future 10:18	i identification 10:7 identified 10:4 including 6:9,16,19 7:8 indicated 8:25 indulge 9:10 industry 10:17 information 10:3 10:12 initial 6:23 inquired 5:4 intention 10:11 interest 7:13 10:5 interested 6:15 7:1 interests 6:11,15 7:1 involved 7:20 issue 5:2,3,14 6:21 7:14 8:1,2 10:1 issues 5:7 8:4,18 it'll 9:16	m margaret 3:8 4:9 martin 1:21 mass 7:5 matter 1:5 mccostlin 2:25 12:3 12:7 measure 10:2 mg 1:3 mineola 12:25 money 8:19 motion 2:1 4:14,17 4:23 5:11,19,22,23 5:25,25 8:8,23 11:5 mouth 8:19 move 8:14	p p 3:1,1 4:1 page 11:4 papers 5:7,18 part 6:7 9:20 parte 9:11,13 particular 7:10 8:7 parties 7:4,24 8:17 pending 5:19 permission 8:12 permit 9:2 10:6 person 6:9 phrase 8:18 place 10:19 please 4:3 pm 1:18 10:23 posed 7:14 practicing 10:16 preliminary 5:3 prepared 9:9 present 7:17 8:2 prior 5:1 10:4 probably 4:21 proceed 4:25 proceeding 6:5 10:6 proceedings 10:23 12:4
g g 4:1 gallery 4:10 geoffrey 3:6 4:5 giving 6:19 glad 4:18 glenn 1:21 going 9:19,20 10:6 10:17 good 4:5,7,8 granted 6:1,14,17 grants 8:8 green 1:14	j jared 3:7 4:9 joint 4:11 judge 1:22	n n 3:1 4:1 11:1 12:1 name 5:5 7:21,22 names 9:3 never 10:17 new 1:2,15,15 3:4 noted 4:21	
	k keep 9:20 keiran 4:10 5:24		

proceeds 5:15 process 7:24 proof 6:22 proper 7:19 properly 7:14,23 property 7:10,14,18 8:5 proposed 8:9 proskauer 3:2 4:6 protected 6:12,16 7:2,23 protection 7:4 8:2 provide 9:4 provided 6:10 provides 6:4,13 8:4 ptbs 2:1 publicly 10:12 pursuant 2:1 5:20 7:11 put 8:18 9:16	resulted 5:10 return 9:6 returned 5:15 review 5:18 6:2 8:9 9:6 right 4:3,4 9:18 10:20,22 rights 7:22 rise 4:2 road 12:23 rose 3:2 4:6 rulings 11:3 rupert 4:12	sufficient 7:3 sufficiently 6:12,16 7:2,23 suggested 8:5 suite 12:24 support 5:8 supported 5:23 sure 9:15 10:9,13 system 8:4	v valid 7:13 vault 9:16 veritext 12:22 version 9:5
	s	t	w
q	s 3:1 4:1 safekeeping 9:17 10:15 satisfied 5:13,19 6:11 7:19 8:3 schedules 8:24 seal 9:3,14 10:9 seated 4:3 sec 4:20 second 7:9 8:14 secondly 8:22 section 5:20 6:3,13 6:14 7:11 security 6:19 see 4:18 7:5,15 sent 8:13 showed 10:5 showing 6:3 7:20 situation 8:6 solutions 12:22 sort 5:3 southern 1:2 square 3:3 states 1:1 2:3 4:17 5:22 6:8,12,25 7:8 11:7 sub 5:4 subject 4:24 6:17 9:22 submitted 5:13 7:7 8:10 subsequent 7:16	t 12:1,1 table 4:9 take 8:16 thank 8:11,21 10:14 10:21 thanks 10:20 think 5:8,10,16 8:17 9:23 thoughtfulness 8:21 times 3:3 today 4:8,14,25 8:15,15 9:10,10,12 topic 8:14 transcribed 2:25 transcript 12:3 true 12:4 trustee 9:5,6 turned 7:11	waiving 8:23 walkers 4:12 want 9:25 10:5 wanted 10:2 we've 4:17 weeks 8:22 went 5:12 8:25 who've 7:25 wishes 4:25 words 6:6,18
question 7:17 quote 6:4,14 7:2,4		x	x 1:4,11 11:1
r		u	y
r 1:20 3:1 4:1 12:1 raicht 3:6 4:5,6,8 4:19,23 5:17 8:11 9:13,18 10:14,16,21 raised 5:1 7:25 reasons 10:2 recall 8:23 recognition 6:5 record 12:4 relief 6:13,17,22 representative 2:3 6:7,9,23 representatives 5:22 7:6 11:8 request 5:8 6:6 8:23 requirements 8:24 residents 7:25 resolving 8:4 respect 6:22 7:24 rests 7:4 result 5:16		u.s. 1:13,22 7:8,25 8:2 9:5,6 u.s.c 5:20 u.s.c. 2:1 ultimately 7:2 uncontested 5:11 8:20 understanding 9:5 undoubtedly 5:9 united 1:1 2:3 4:16 5:22 6:8,11,25 7:8 11:7 unopposed 5:25 unredacted 9:4,16 10:3,13	z zajac 3:7 4:9